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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 82-6732

DAVID FELIX,

Appellant,

-against-

STATE OF NEW YORK,

Appellee.

On Appeal From the Court of Appeals of New York

MOTION TO DISMISS OR AFFIRM

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TABLE OF CONTENTS

		PAGE
TABLE OF AUTHORITIES		ii
INTRODUCTION		1
PRELIMINARY STATEMENT		2
THE STATE STATUTE INVOLVED		2
STATEMENT OF THE CASE		4
ARGUMENT -	THERE IS NO SUBSTANTIAL FEDERAL QUESTION THAT THE NEW YORK LEGISLATURE HAS THE AUTHORITY TO ENACT A SCHEME LIMITING THE PLEA AND SENTENCING BARGAINING AVAILABLE TO DEFENDANTS INDICTED FOR ARMED FELONIES	7
	A. The New York Legislature did not violate due process by exercising its traditional power to enact a scheme limiting the sentencing alternatives available to defendants who are indicted for armed felonies but are permitted to enter negotiated guilty pleas to lesser crimes...	8
	B. The procedure set forth in New York Penal Law Section 70.02(5)(c) is consistent with the requirements of procedural due process	13
CONCLUSION		18

TABLE OF AUTHORITIES

CASES:	PAGE
Billiteri v. United States Bd. of Parole, 541 F.2d 938 (2d Cir.1976)	12
Bistram v. United States Parole Bd., 535 F.2d 329 (5th Cir. 1976)	12
Chandler v. Fretag, 348 U.S. 3 (1954)	15
County Court of Ulster County v. Allen, 442 U.S. 140 (1979)	16
Dorszynski v. United States, 418 U.S. 424 (1974)	9
Drayton v. People of the State of New York, 556 F.2d 644 (2d Cir.), cert. denied, 434 U.S. 958 (1977)	11
Gardner v. Florida, 430 U.S. 349 (1977)	13, 16
Graham v. West Virginia, 224 U.S. 616 (1912)	15
Hollis v. Smith, 571 F.2d 685 (2d Cir. 1978)	15
Leary v. United States, 395 U.S. 6 (1969)	16
Menechino v. Oswald, 430 F.2d 403 (2d Cir. 1970), cert. denied, 400 U.S. 1023 (1	
Brewer, 408 U.S. 471 (1972)	13
Mullaney v. Wilbur, 421 U.S. 684 (1975)	16
North Carolina v. Alford, 400 U.S. 25 (1970)	12
Oyler v. Boles, 368 U.S. 448 (1962)	15
People v. Felix, 58 N.Y.2d 156 (1983)	2, 7, 11, 17
People v. Felix, 87 A.D.2d 529 (1st Dept.), leave to appeal granted, 56 N.Y. 2d 656 (1982)	2, 7
People v. Griffin, 7 N.Y.2d 511 (1966)	12
Roberts v. United States, 445 U.S. 552 (1980)	11
Santobello v. New York, 404 U.S. 257 (1971)	8
Specht v. Patterson, 386 U. . 605 (1967)	13, 14, 15
Tot v. United States, 319 U.S. 463 (1943)	11, 16
Townsend v. Burke, 334 U.S. 736 (1948)	11,12
United States v. Bowser, 497 F.2d 1017 (4th Cir.), cert. denied, 423 U.S. 997 (1975)	9
United States v. Cifarelli, 401 F.2d 512 (2d Cir.), cert. denied, 393 U.S. 987 (1968)	12
United States v. DiFrancesco, 449 U.S. 117 (1980)	10, 15

TABLE OF AUTHORITIES
(CON'T)

CASES:	PAGE
United States v. Doyle, 348 F.2d 715 (2d Cir.), cert. denied, 382 U.S. 843 (1965)	12, 13
United States v. Fatico, 603 F. 2d 1053 (2d Cir. 1979), cert. denied., 444 U.S. 1073 (1980)	15
United States v. Grayson, 438 U.S. 41 (1978)	9, 10, 12
United States v. Harris, 558 F.2d 366 (7th Cir. 1977)	9
United States v. Hendrix, 505 F.2d 1233 (2d Cir. 1974), cert. denied, 423 U.S. 897 (1975)	12
United States v. Holt, 397 F. Supp. 1397 (N.D. Tex. 1975), aff'd in part rev'd in part on other grounds, 537 F.2d 845 (1976), cert. denied sub nom Hartstrom v. United States, 429 U.S. 1051 (1977)	15, 17
United States v. Ilacqua, 562 F.2d 399 (6th Cir. 1977), cert. denied, 435 U.S. 906 (1978)	15, 17
United States v. Inendino, 604 F.2d 458 (7th Cir.), cert. denied, 444 U.S. 932 (1979)	15, 17
United States v. Needles, 472 F.2d 652 (2d Cir. 1973)	12
United States v. Stewart, 531 F.2d 326 (6th Cir.), cert. denied, 426 U.S. 922 (1976)	15, 17
United States v. Sweig, 454 F.2d 181 (2d Cir. 1972)	12
United States v. Tucker, 404 U.S. 443 (1972)	11
United States v. Williamson, 567 F.2d 610 (4th Cir. 1977)	15, 17
Williams v. New York, 337 U.S. 241 (1949)	12, 13, 15, 16
Wolff v. McDonnell, 418 U.S. 539 (1974)	13

TABLE OF AUTHORITIES
(CON'T)

	PAGE
STATUTES:	
U.S. Const. Amend. XIV	2, 7
18 U.S.C. §3575(b)(e) (West Supp. 1983)	15, 16
N.Y. Criminal Procedure Law §1.20(41) (McKinney 1981)	3
N.Y. Penal Law §70.02(5) (McKinney Supp. 1982)	1, 2, 3-4, 5, 6, 7, 10, 11, 13, 14, 15, 18
N.Y. Penal Law §110 (McKinney 1975)	2, 5
N.Y. Penal Law §160.10 (McKinney 1975)	2, 4
N.Y. Penal Law §160.15(3) (McKinney 1975)	4, 5
N.Y. Penal Law §265.01 (McKinney 1980)	5
OTHER AUTHORITIES:	
Bellacosa, 1978 Supplementary Practice Commentary to N.Y. CPL §220.10 (McKinney Supp. 1981)	8
Hechtman, 1978 Practice Commentary to New York Penal Law §70.02 (McKinney Supp. 1982)	8
Schulhofer, Due Process of Sentencing, 128 U. Pa. L. Rev. 733 (1980)	10, 14

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INTRODUCTION

Appellant David Felix pleaded guilty to a class D violent felony offense in satisfaction of an indictment charging him with an armed violent felony. Because Felix was initially indicted for an armed violent felony but negotiated a plea to a lesser charge, Section 70.02(5) of the New York Penal Law (McKinney Supp. 1982) required that he serve at least one to three years in prison as a condition of that plea bargain, unless the court found one of three specified mitigating circumstances about the nature of the crime. On appeal to this Court, Felix

asserts that the New York Court of Appeals incorrectly ruled that the statute did not deprive him of due process of law under the Fourteenth Amendment to the United States Constitution.

The appellee moves to dismiss this appeal or, in the alternative, to affirm the judgment of the New York Court of Appeals, on the ground that it is manifest that the question is so insubstantial as not to warrant further argument.

PRELIMINARY STATEMENT

On October 19, 1979, appellant David Felix was convicted in the Supreme Court of the State of New York, New York County (Fitzer, J.), upon his plea of guilty, of Attempted Robbery in the Second Degree [N.Y. Penal Law §§110/160.10 (McKinney 1975)]. He was sentenced on August 28, 1980, to an indeterminate prison term of from one to three years. On March 16, 1982, the New York Supreme Court, Appellate Division affirmed the conviction. People v. Felix, 87 A.D.2d 529 (1st Dept.), leave to appeal granted, 56 N.Y. 2d 656 (1982). On February 15, 1983, the New York Court of Appeals (with one judge dissenting) affirmed the conviction. People v. Felix, 58 N.Y.2d 156 (1983). Defendant has served his prison term and been released on parole.

THE STATE STATUTE INVOLVED

This appeal concerns the constitutionality of Section 70.02(5) of the New York Penal Law, which governs plea and sentence bargaining for defendants charged in an indictment with an armed violent felony. An "armed" felony is defined as a violent felony aggravated by the

use or display of what is or appears to be a firearm. N.Y. Criminal Procedure Law §1.20(41) (McKinney 1981). Subsection (a) of the statute provides that the sentencing judge must ordinarily impose an indeterminate sentence of imprisonment on the plea-bargaining defendant. Subsection (b), however, permits a judge, in his discretion, to sentence the defendant to a lesser sentence, including probation, if there exists any one of three specific mitigating factors concerning the way the crime was committed. Subsection (c) provides the mechanism for determining whether any of the mitigating factors exist in a particular case. Under that subsection, either the defendant or the district attorney may present any relevant information to the court, which may then conduct a hearing on the issue.

Penal Law Section §70.02(5) reads in full:

> (a) Except as provided in paragraph (b) of this section, where a plea of guilty to a class D violent felony offense is entered pursuant to section 220.10 or 220.30 of the criminal procedure law in satisfaction of an indictment charging the defendant with an armed felony as defined in subdivision forty-one of section 1.20 of the criminal procedure law, the court must impose an indeterminate sentence of imprisonment pursuant to section 70.00.
>
> (b) In any case in which the provisions of paragraph (a) hereof or the provision of subparagraph (ii) of paragraph (c) of subdivision two of this section apply, the court may impose a sentence other than an indeterminate sentence of imprisonment, or a definite sentence of imprisonment for a period of no less than one year, if it finds that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the

> defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or (iii) possible deficiencies in proof of the defendant's commission of an armed felony.
>
> (c) The defendant and the districct attorney shall have an opportunity to present relevant information to assist the court in making a determination pursuant to paragraph (b) hereof, and the court may, in its discretion, conduct a hearing with respect to any issue bearing upon such determination. If the court determines that an indeterminate sentence of imprisonment should not be imposed pursuant to the provisions of such paragraph (b), it shall make a statement on the record of the facts andd circumstances upon which such determination is based. A transcript of the court's statement, which shall set forth the recommendation of the district attorney, shall be forwarded to the state division of criminal justice services along with a copy of the accusatory instrument.

STATEMENT OF THE CASE

On January 18, 1979, appellant forced Sam Rohm onto a subway train at 86th Street in Manhattan by displaying both a knife and what appeared to be a pistol and threatening Rohm with physical injury. While on the train, appellant stole a "Grateful Dead" button from Rohm. Appellant then forced Rohm off the train at the 42nd Street station, and was searching Rohm's pockets when the police arrested him. The stolen button, the knife and the imitation pistol were recovered from appellant. In an indictment filed on January 23, 1979, appellant was charged with Robbery in the First Degree (with a knife) [N.Y. Penal Law §160.15(3)(McKinney 1975)], Robbery in the Second Degree (displaying what appeared to be a pistol) as an Armed Felony [N.Y. Penal Law §160.10(2)(b)(McKinney 1975)], Attempted Robbery in

the First Degree [N.Y. Penal Law §§110/160.15(3) (McKinney 1975)], and two counts of Criminal Possession of a Weapon in the Fourth Degree [N.Y. Penal Law §265.01(McKinney 1980)]. Indictment No. 282/79.

On October 19, 1979, appellant offered to plead guilty to Attempted Robbery in the Second Degree in satisfaction of the entire indictment (Plea: A50-51).* The court explained to appellant that he was offering to plead guilty to a class D violent felony offense and that, because the indictment charged an armed felony, a sentence of at least one to three years in state prison was required. The court promised, however, that it would consider any application for a lesser sentence due to mitigating circumstances, but would not promise to impose a lesser sentence (Plea: A52-54). Appellant replied that he understood the terms of his negotiated plea (Plea: A55-57). He then admitted that on January 18, 1979, he had forcibly stolen a "Grateful Dead" button at knifepoint from Sam Rohm in the subway at Broadway and 86th Street (Plea: A57-58).

On January 30, 1980, appellant presented a written memorandum, asking the court to find "mitigating circumstances" pursuant to Section 70.02(5)(b) of the New York Penal Law and to impose more lenient punishment than the state prison sentence otherwise mandated. The court found "insufficient mitigating circumstances" and denied the request on February 22, 1980 (see Decision: A40). In June of 1980, appellant asked the court to hold that Penal Law Section 70.02(5) violated due process of law under the State and Federal constitutions. In a written

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*Numbers preceded by "A" refer to Appellant's Appendix; those preceded by "JS" refer to Appellant's Jurisdictional Statement.

decision dated August 28, 1980, the court found that the statute does not "automatically exclude" an individual who has been indicted for an armed felony from the "usual alternatives to a state prison sentence under a plea to a 'D' violent felony." Rather, the statute simply establishes "certain guidelines and conditions" for the court's exercise of its power to impose an alternative sentence (Decision: A40-42). The court therefore concluded the statute was constitutional.

On August 28, 1980, appellant once again asked the sentencing court to find "mitigating circumstances" because of appellant's family history and the fact that nobody was injured during the commission of the crime (Sentence: A45-46). The prosecutor noted that this was appellant's fourth arrest and third robbery arrest, and that he was on probation on a robbery case when he committed this crime (Sentence: A46-47). The court stood by its previous decision that no relevant mitigating factors existed, and refused to reconsider its decision that Section 70.02(5) of the Penal Law was constitutional (Sentence: A47). The court then sentenced appellant to the promised prison sentence of from one to three years (Sentence: A48).

On appeal to the Appellate Division of the New York Supreme Court, appellant claimed that Section 70.02(5) of the Penal Law denied him due process of law for three reasons. First, he argued that the statute improperly prevents persons indicted for an armed felony offense from receiving a negotiated sentence of less than from one to three years, unless specified mitigating factors exist. Second, he contended that the statute creates an unconstitutional presumption of guilt and

improperly shifts to a defendant the burden of exonerating himself. Third, appellant asserted that the statute unconstitutionally precludes the court from considering a defendant's background in imposing sentence. The Appellate Division affirmed the conviction. People v. Felix, 87 A.D.2d 529 (1st Dept.), leave to appeal granted, 56 N.Y.2d 656 (1982) (A15-39).

On appeal to the New York Court of Appeals, appellant repeated his challenge to the constitutionality of the statute. That Court, with one judge dissenting, held that Penal Law Section 70.02(5) did not violate either the State or the Federal constitution. People v. Felix, 58 N.Y.2d 156 (1983) (A1-14).

ARGUMENT

THERE IS NO SUBSTANTIAL FEDERAL QUESTION THAT THE NEW YORK LEGISLATURE HAS THE AUTHORITY TO ENACT A SCHEME LIMITING THE PLEA AND SENTENCING BARGAINING AVAILABLE TO DEFENDANTS INDICTED FOR ARMED FELONIES.

In his jurisdictional statement, appellant asserts that Section 70.02(5) of the New York Penal Law deprived him of his Fourteenth Amendment right to due process of law for several reasons. First, he claims that the New York Legislature has no power to restrict what he calls the "ordinary sentencing discretion of the court" (JS: 9), even when the plea and sentence are negotiated by defendants indicted for armed violent felony offenses. Second, appellant asserts that the statute creates a "mandatory presumption" of a defendant's guilt of an armed felony, and shifts to him the burden of disproving his guilt. Finally, he argues that there are insufficient procedural safeguards at the

hearing at which it is determined whether a defendant should be given a more lenient sentence because of mitigating circumstances (JS: 16). As will be demonstrated, appellant has failed to raise any substantial federal question which merits review by this Court.

A. The New York Legislature did not violate due process by exercising its traditional power to enact a scheme limiting the sentencing alternatives available to defendants who are indicted for armed felonies but are permitted to enter negotiated guilty pleas to lesser crimes.

Concerned with the problem of violent crime and the overly lenient treatment of violent criminals, the New York Legislature enacted a unified package of legislation aimed at limiting the alternatives open to defendants in a plea-bargaining situation. First, it limited the crime to which a defendant charged with an armed violent felony could plead: no plea lower than than a class D violent felony could be accepted. Second, it limited the sentence available to such a plea-bargaining defendant: absent specified ameliorating factors bearing upon the way the crime was committed, the defendant must receive a prison term of at least one to three years.

It is beyond dispute that a legislature has the power to restrict plea bargaining, or even to eliminate it altogether. Santobello v. New York, 404 U.S. 257, 262 (1971). Perhaps recognizing this, appellant does not challenge the Legislature's decision to limit the degree of the crime to which a defendant can plead. Nonetheless, he does challenge the Legislature's decision to

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*See Hechtman, 1978 Practice Commentary to Penal Law §70.02 (McKinney Supp. 1982); Bellacosa, 1978 Supplementary Practice Commentary to CPL §220.10 (McKinney Supp. 1981).

limit the nature of the sentence imposed as a result of plea-bargaining. His claim that the Legislature cannot restrict sentencing discretion by limiting the factors to be considered in mitigation is totally without support and raises no substantial federal question.

Plainly, a legislature has the power to define the punishment applicable to each non-capital crime, even by choosing to make sentencing totally mandatory. As this Court discussed in United States v. Grayson, 438 U.S. 41, 45-47 (1978), no one penological model is mandated by the Constitution. In the past, judges had no discretion at all: each crime had its specific punishment, and courts could not consider a defendant's background in imposing sentence. Id. at 45-46. More recently, the prevailing philosophy has been the rehabilitative model, in which legislatures permitted judges to consider a broad, almost unlimited variety of factors in determining what sentence was appropriate. Id. at 46-49. True, as appellant notes, when a sentencing statute mandates that a judge consider a broad range of factors before imposing sentence, it is an abuse of discretion for the judge not to do so. See, e.g., Dorszynski v. United States, 418 U.S. 424 (1974); United States v. Harris, 558 F. 2d 366, 372 (7th Cir. 1977); United States v. Bowser, 497 F.2d 1017 (4th Cir.), cert. denied, 423 U.S. 997 (1975). However, those precedents plainly do not prevent the Legislature from restricting the range of discretion given a sentencing judge in the first instance.

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*See Hechtman, 1978 Practice Commentary to Penal Law §70.02 (McKinney Supp. 1982); Bellacosa, 1978 Supplementary Practice Commentary to CPL §220.10 (McKinney Supp. 1981).

Since a legislature is empowered to give a judge total discretion in sentencing, or no discretion at all, it may certainly take a middle course and give him some discretion. That is exactly what the New York Legislature did in enacting Penal Law Section 70.02(5). It permitted the sentencing judge to consider the usual broad range of factors, including a plea-bargaining defendant's background, in determining the length of the prison term he is to receive. At the same time, however, the Legislature mandated that only certain specified factors dealing with the nature of the crime be considered in determining whether a defendant receives less than a one to three year term.

No federal case has ever adopted appellant's unprecedented argument that legislatures do not have the power to limit judicial discretion in sentencing in this way. Indeed, this Court has suggested that the reign of the "rehabilitative" unlimited judicial discretion model may soon be over. United States v. DiFrancesco, 449 U.S. 117, 143 (1980); United States v. Grayson, 438 U.S. at 47, fns. 6 and 7; see also Schulhofer, Due Process of Sentencing, 128 U. Pa. L. Rev. 733, 734, 737 (1980). Thus, no substantial federal question is raised by appellant's attempt to constitutionalize current penological policy on an issue that has traditionally been within the aegis of the legislative branch of government.

Nor is a substantial federal question raised by appellant's claim that consideration of "unsustained charges in the indictment" constitutes reliance on "misinformation of constitutional magnitude." In the first place, Penal Law Section 70.02(5) does not make the

sentence imposed on a plea-bargaining defendant depend "solely" on the crime initially charged, as appellant argues. Cf. Drayton v. People of the State of New York, 556 F.2d 644, 646-47 (2d Cir.) cert. denied, 434 U.S. 958 (1977). Rather, a judge may consider a broad variety of factors, including the defendant's background and prior criminal conduct, in deciding whether to impose the maximum prison term of two and one-third to seven years or the minimum of one to three years. And, such a defendant is not even precluded from the lower range of sentences, such as probation. The statute vests the sentencing judge with discretion to impose the lesser sentence when any one of three mitigating factors exist. People v. Felix, 58 N.Y.2d at 163.

Of course, as appellant points out, an indictment alone cannot constitute proof during the guilt-determining process. Tot v. United States, 319 U.S. 463, 466 (1943). However, Penal Law Section 70.02(5) deals with the sentencing, and not the guilt-determining, phase of a criminal case. No federal case has held that charges in an indictment constitute the type of "misinformation of constitutional magnitude"* that a sentencing judge is forbidden to consider. Just the opposite is true. Federal cases have uniformly held that information about crimes initially charged in an indictment but dismissed when a defendant pleads guilty

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*See United States v. Tucker, 404 U.S. 443, 446 (1972); Townsend v. Burke, 334 U.S. 736, 741 (1948); Roberts v. United States, 445 U.S. 552, 556-57 (1980).

may be considered by the sentencing judge.* Indeed, sentencing judges may consider criminal conduct which did not result in a conviction, crimes for which a defendant was never charged, and even facts relating to charges on which the defendant was acquitted.**

Judicial consideration of the "real offense" in sentencing is particularly appropriate in the plea bargaining situation, since the crime to which a defendant ultimately pleads guilty may bear no relationship to the crime he has actually committed. Indeed, a defendant may plead guilty without admitting the facts of the crime to which he offers to plead, North Carolina v. Alford, 400 U.S. 25, 37 (1970), may plead guilty to a hypothetical crime, People v. Griffin, 7 N.Y. 2d 511 (1966), or may admit facts making out another crime. That is precisely what happened here: appellant pleaded guilty to Attempted Robbery in the Second Degree, which contemplates the use of an imitation pistol, but admitted facts making out Robbery in the First Degree, which contemplates the use of a knife. As the Second Circuit has said, to argue that the Constitution is

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**See, e.g., Billiteri v. United States Bd. of Parole, 541 F. 2d 938, 944-45 (2d Cir. 1976); Bistram v. United States Parole Bd., 535 F.2d 329, 330 (5th Cir. 1976); United States v. Needles, 472 F. 2d 652 (2d Cir. 1973); Menechino v. Oswald, 430 F. 2d 403, 407-08 (2d Cir. 1970), cert. denied, 400 U.S. 1023 (1971); United States v. Doyle, 348 F. 2d 715, 721 (2d Cir.), cert. denied, 382 U.S. 843 (1965).

**Williams v. New York, 337 U.S. 241, 244 (1949) and United States v. Cifarelli, 401 F. 2d 512 (2d Cir.), cert. denied, 393 U.S. 987 (1968) (criminal conduct which did not result in a conviction); United States v. Grayson, 438 U.S. at 53-54 and United States v. Hendrix, 505 F. 2d 1233, 1235 (2d Cir. 1974), cert. denied, 423 U.S. 897 (1975) (crimes for which defendant was never charged); Townsend v. Burke, 334 U.S. at 740-41 and United States v. Sweig, 454 F. 2d 181 (2d Cir. 1972) (other charges on which the defendant was acquitted).

affronted by considering unproved criminal activity while determining sentence in a plea bargaining situation such as this one, is as implausible as taking the double jeopardy clause to bar reference to past convictions. United States v. Doyle, 348 F.2d at 721; see Schulhofer, supra, at 763. Indeed, if it is within the ordinary discretion of the judge to consider unsustained charges in the indictment in deciding on an appropriate sentence, the Legislature certainly has the authority to mandate that a sentencing judge consider this factor.

It was well within the Legislature's power to restrict plea and sentence bargaining for defendants charged with armed violent felonies. Nor is any substantial federal question raised by a sentencing court's consideration of the nature of the crime originally charged in the indictment.

B. The procedure set forth in New York Penal Law Section 70.02(5)(c) is consistent with the requirements of procedural due process.

It is beyond cavil that the concept of due process is flexible, and its procedural requirements vary with different situations. See, e.g., Gardner v. Florida, 430 U.S. 349, 358 fn. 9 (1977); Wolff v. McDonnell, 418 U.S. 539, 560-61 (1974); Morrissey v. Brewer, 408 U.S. 471, 481 (1972). In particular, this Court has recognized that "the due process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure." Williams v. New York, 337 U.S. at 251.

Appellant, however, attempts to do just that. Relying on Specht v. Patterson, 386 U.S. 605 (1967), appellant argues that Penal Law Section 70.02(5)(c)

subjects a defendant to "enhanced punishment" based upon "facts not established by the conviction," and that he is therefore entitled to most of the due process rights applicable at trial. This argument has consistently been rejected by the federal courts, and need not be considered again.

Specht involved a defendant convicted under a Colorado indecent liberties statute under which the maximum sentence that could be imposed was ten years. Without holding a hearing, the trial court used that conviction as a basis for sentencing Specht under the Sex Offenders Act, a separate statute, under which the maximum sentence that could be imposed was life imprisonment. This Court held that due process required that defendant have the right to be present with counsel, to confront and cross-examine witnesses, and to present evidence on his own behalf before the court could, on the basis of the previously uncharged crime which the Sex Offenders Act involved, impose a sentence heavier than that permitted for the crime of which he stood convicted. 386 U.S. at 610; see Schulhofer, supra at 762.

In the first place, no defendant is subject to "enhanced punishment" after a post-plea hearing pursuant to Penal Law Section 70.02(5)(c). Rather, any new facts found at that hearing can serve only to reduce, not to enhance, the punishment which a defendant was told he would receive at the time he entered his guilty plea. And, in contrast to Specht, Penal Law Section 70.02(5)(c) involves no separate statute and no new criminal charge. What is at issue is not a defendant's guilt of a new and previously uncharged crime, but only the degree of punishment to be imposed on him for the crime of which he

was already convicted. See Williams v. New York, 337 U.S. at 247.

In any event, a sentencing inquiry into facts not brought out at a trial or plea colloquy is simply not tantamount to a "new criminal charge" against a defendant. This is true even if a defendant is subject to enhanced punishment after the inquiry, as are defendants who are sentenced as repeat offenders,* and defendants found to be "dangerous special offenders" under the Federal Organized Crime Control Act of 1970.** 18 U.S.C. §3575(e)(West Supp. 1983). Indeed, by definition, inquiry into a defendant's background involves consideration of facts not established by the conviction. Yet this Court has specifically rejected appellant's claim that such an inquiry requires freezing the evidential procedure of sentencing in the mold of trial procedure. Williams v. New York, 337 U.S. at 251. Therefore, appellant's argument that he was entitled to trial-like procedures at sentencing raises no substantial federal question.

Furthermore, unlike the statute involved in Specht, Penal Law Section 70.02(5)(c) gives a defendant

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*See, e.g., Oyler v. Boles, 368 U.S. 448, 451-52 (1962); Chandler v. Fretag, 348 U.S. 3, 8 (1954); Graham v. West Virginia, 224 U.S. 616, 624-25 (1912).

**See e.g. United States v. Stewart, 531 F. 2d 326, 332 (6th Cir.), cert. denied, 426 U.S. 922 (1976); United States v. Inendino, 604 F. 2d 458, 463 (7th Cir.), cert. denied, 444 U.S. 932 (1979); United States v. Ilacqua, 562 F.2d 399, 403 fn. 7, 405 (6th Cir. 1977), cert. denied, 435 U.S. 906 (1978); United States v. Williamson, 567 F.2d 610, 614-15 (4th Cir. 1977); United States v. Holt, 397 F. Supp. 1397 (N.D. Tex. 1975), aff'd in part rev'd in part on other grounds, 537 F. 2d 845 (1976), cert. denied sub nom Hartstrom v. United States, 429 U.S. 1051 (1977). See also, United States v. DiFrancesco, supra; United States v. Fatico, 603 F.2d 1053, 1057 (2d Cir. 1979), cert. denied, 444 U.S. 1073 (1980); Hollis v. Smith, 571 F.2d 685, 694-95 (2d Cir. 1978).

the right at a hearing to deny or explain the information concerning the original charge in the indictment. Gardner v. Florida, 436 U.S. at 355-56; Williams v. New York, 337 U.S. at 244. He is specifically permitted to present relevant information to the sentencing judge, and of course he is entitled to the assistance of counsel at the inquiry. Nor is there any indication that he would not be able to confront and cross-examine witnesses against him, or call his own witnesses at the hearing, as may defendants being sentenced as dangerous special offenders under 18 U.S.C. §3575(b).

And, contrary to appellant's claim, the statute does not place on him the burden of proving that he did not commit the crimes with which he was originally charged. First, appellant erroneously bases his argument on precedents dealing with presumptions which shift the burden of proof to a defendant during the guilt-determining process. County Court of Ulster County v. Allen, 442 U.S. 140 (1979); Mullaney v. Wilbur, 421 U.S. 684 (1975); Leary v. United States, 395 U.S.6 (1969); Tot v. United States, supra. Again, appellant misses the point by equating the guilt-determining with the sentencing process. What is involved here is the determination of the appropriate sentence for a crime of which appellant has already been convicted.

In any event, the statute does not specify a burden of proof at all, but explicitly gives both the prosecutor and the defendant a chance to present any relevant information to the court. A sentencing judge is as likely to get his information about the way the actual crime was committed from the prosecution or the pre-sentence report as from a defendant. Due process is

hardly offended by the probability that in some cases establishment of a mitigating factor will require that a defendant come forward with proof. People v. Felix, 58 N.Y.2d at 166-67.*

Indeed, in every case arising under this statute, the People have already gone forward in the grand jury with evidence legally sufficient to prove that a defendant committed an armed violent felony. The People in appellant's case were also ready to proceed to trial on all counts. Appellant could have had a public trial where he could put the People to their proof beyond a reasonable doubt. It was he, on the advice of counsel, who avoided airing of the facts by negotiating the bargain by which he was permitted to plead guilty to a lesser crime. He voluntarily chose to accept that advantageous bargain, and a far more lenient sentence than would be required if he were convicted of the top charge at trial. Having made that choice, he cannot now argue that due process mandates still further leniency or requires at the sentencing all the rights he chose to forego when he waived his right to trial.

* * *

In sum, appellant's arguments fly in the face of established federal law and do not merit consideration by this Court. All previous law on the subject supports

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*Indeed, it has consistently been held in the federal courts that the dangerous special offender statute, which places the burden of proof on the government by a preponderance of the evidence, actually provides "far more due process protection for the convicted offender at his hearing on increased sentence than is required." United States v. Stewart, supra; United States v. Inendino, supra; United States v. Ilacqua, supra; United States v. Williamson, supra; United States v. Holt, supra.

the conclusion that a legislature has the power to set sentencing guidelines for judges, and that a sentencing judge may consider the crime for which a defendant was indicted in deciding what sentence to impose. The procedure set down in Penal Law Section 70.02(5) is similar to that in other statutes which have been found to satisfy the requirements of due process. There is no reason for this Court to disturb this well-settled area of law by considering this appeal.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

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